

Minutes
Joint Legislative Program Evaluation Oversight Committee Meeting
June 17, 2013

Members Present

Senator Fletcher Hartsell, Chair
Senator Stan Bingham
Senator Ben Clark
Senator Rick Gunn
Senator Ralph Hise
Senator Shirley Randleman

Representative Julia Howard, Chair
Representative Pat Hurley
Representative David Lewis
Representative Marvin Lucas
Representative Tim Moffitt

Call to Order

Senator Fletcher Hartsell, Chair, called the meeting to order.

Senator Randleman moved to approve the May 20, 2013 *Minutes*. Motion carried.

Presentations and Appearances

Senator Hartsell recognized Auditor Beth Wood, who presented compliance findings from audits of three of five boards:

(1) North Carolina Board of Funeral Service.

Audit Purposes:

- To ensure that funeral establishment inspections and investigative complaints are completed in a timely manner and that corrective action is taken for noted violations.
- To ensure that the Board's fees and penalties as authorized by statute, as well as revenues, were properly recognized and accounted for.
- To ensure that the Board issued licenses only to qualified applicants.

Findings:

- Inspections will be performed on a regular basis, with no more than three years between inspections of establishments with no serious deficiencies noted, and two years for establishments with serious deficiencies noted on the previous inspection.
- One person responsible for recording collections, preparing bank deposits, maintaining license records, and reconciling license records to the accounting system.

(2) North Carolina Licensing Board for General Contractors.

Audit Purposes:

- To regulate the practice of general contracting in NC by evaluating licensure applications for specific criteria and by granting licenses to qualified contractors.
- To impose disciplinary action in appropriate cases by suspending or revoking the licenses of general contractors who violate provisions of the Board's disciplinary statute.

Findings:

- Noncompliance with NC General Statutes – Board has not filed the report with the State Treasurer since 1995
- There is no record that Board members received training on Chapter 150B (Administrative Procedure Act), Chapter 132 (the Public Records Law), Article 33C of Chapter 143 (the

Open Meetings Act), or Articles 31 and 31A of Chapter 143 (the State Tort Claims Act and the Defense of State Employees Law).

- Contract with Exam Administrator not renewed.
- The Board did not renew its contract with Psychological Services, Inc. annually, thus PSI provided services to the Board without a valid contract from May 1, 2011 through January 4, 2013.

(3) The State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors.

Audit Purposes:

- To protect public health, safety and welfare by prescribing standards of competence, experience, and efficiency of applicants for license by examination.
- To enforce statutory requirements and hold open hearings for the benefit of licensees and the public.

Findings:

- No competitive process or written contract for legal services – legal services procured without competitive process and no written contract for legal services (flat fee for last 3 years – \$325,000)

Senator Bingham requested the Auditor to furnish a list of non-compliant funeral homes as well as information on the hours spent on cases through October 2012 of the Plumbing, Heating and Fire Sprinkler Contractors.

Senator Clark asked the Auditor to explain the basis for findings for which no statute was cited, noting that some of the audits referenced failure to comply with a statute and other findings made no reference to a statute. Auditor Wood explained that some audits have performance components and that criteria for findings could be compliance with best management practices or other standards for comparison. The finding relative to legal fees for the Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors stemmed from the fact that those fees were two or three times those paid by other boards. Senator Curtis suggested that this may be unfair because the board may not be familiar with or required to conform to best practices or have foreknowledge of these best practices. Auditor Wood said that the Board's legal expenses for a number of years had not gone out for bid, that there was no contract with the attorney, and that the fees were set at a flat \$325,000 paid in twelve installments and since October 2012 without statement of hours worked on the invoices. The Auditor noted that when the Board expressed reservations about having to accept the lowest bidder the auditors explained to the Board that a bid arrangement for a service contract did not require automatic acceptance of the low bidder because service quality would also be a factor and the best bidder could be accepted. The Board concurred and as of May 10 had a contract with counsel and assured that hours spent on each case would be documented. The Board would be considering a recommendation to bid for services.

Senator Hise observed that the Board apparently did not consider soliciting other firms for a service contract but merely requested the existing firm to prepare a contract to become compliant. He asked the Auditor if these Boards operating on fees were subject to State contracting laws or if they were allowed to operate without the constraints applicable to agencies. The Auditor said that the Boards did not have to do so because of how Boards were set up by legislation and had been allowed to operate. Senator Hise observed that the General Assembly may not have information on the Boards regarding overall fund utilization, fee setting and accounting, fund balances, cash on hand, and baseline operating needs. Auditor Wood said that this information was available in the Boards' financial statements. Senator Hise suggested that the information should be included in audit reports presented to the General Assembly. He noted that, for example, the \$325,000 legal

fees may need further examination by the General Assembly because of the potential for an undue burden on those regulated and paying fees.

The Chair recognized John Turcotte, PED Director. Turcotte noted that Florida had a consolidated Department of Business and Professional Regulation that consolidated "back office" functions and common functions such as testing, inspections, and specialized functions while maintaining individual board authority to regulate, and that the concept worked well.

Senator Hartsell requested that the Auditor consider proposing some generic recommendations based upon audit findings to the General Assembly for legislation addressing Boards and Commissions and that the General Assembly should consider these together with the oversight by the administrative procedures oversight function for consistency. The Auditor said that she would.

Senator Hise noted that while reviews focused on operations, the State was still not looking at effectiveness of these Boards in addressing their purposes and whether services provided to those regulated were worth the fees imposed. The Auditor responded that future audits would consider these as audit objectives given legislative interest. Senator Hartsell noted that this appeared to be the consensus of the committee. Auditor Wood said that she would have staff prepare a list of these issues and present the list to the committee for concurrence.

Senator Bingham requested the Auditor to audit the Barber Board.

Representative Moffitt posed questions to the Chair. First, should there be a review by the committee or by the Auditor on the feasibility of consolidation of some of the Boards? Senator Hartsell responded that the Auditor could do this and that the Joint Legislative Administrative Procedure Oversight Committee would consider this in the interim.

Representative Moffitt then asked if the merger of the board overseeing cemeteries with the Board of General Contractors was under consideration. No one present responded.

Representative Moffitt said that there was some interest in allowing landscapers to be licensed to do such work without having to be licensed as a general contractor. He asked for an explanation of the origin of the \$30,000 threshold for defining general contractors for regulation. The Auditor said that the basis was unknown but that \$30,000 was in the statute. Anna Baird Choi of the law firm Allen, Pinnix and Nichols and legal counsel to the General Contractors Board responded that the \$30,000 had been in place for at least 12 years and that it had gone up prior to that. There was discussion in the General Assembly six to eight years ago to reduce that threshold to \$5,000, which would have effectively required the licensure of individuals performing handyman services, but that was not done. The threshold varies among other states.

Senator Hartsell recognized John Turcotte, PED Director, who reported on the status of legislation recommended by the Joint Legislative Program Evaluation Oversight Committee. He reported that the PED website includes a new feature reporting on the status of all projects on the work plan. The site will be updated each Friday. Senator Hartsell asked if there were work plan projects affected by special budget provisions. Turcotte reported that the proposed CCNC and IT studies are currently affected by special provisions requiring the State Auditor to conduct the CCNC study and the CIO to complete the project on duplicative ITS projects.

Senator Hise suggested that the studies be carried out by the entities identified in the special provisions and that when the studies are concluded that PED review the studies.

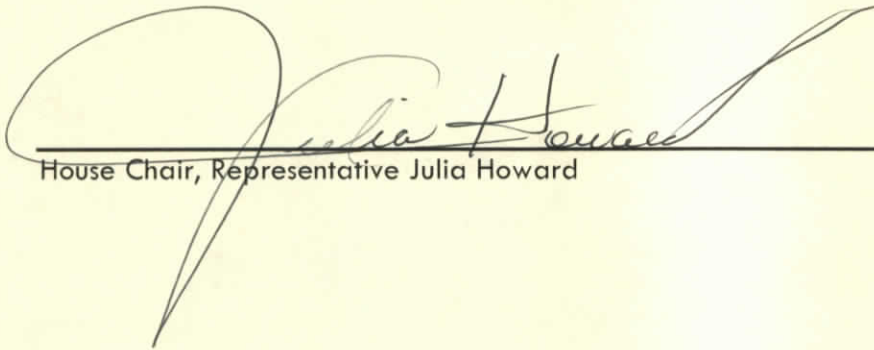
Next meeting date: Monday, July 15, 2013

Adjournment

With no further business, the committee adjourned.

A handwritten signature in blue ink, reading "Fletcher L. Hartsell Jr.", written over a horizontal line.

Senate Chair, Senator Fletcher Hartsell

A handwritten signature in black ink, reading "Julia Howard", written over a horizontal line.

House Chair, Representative Julia Howard